

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
MOLOKAI PUBLIC UTILITIES, INC.)
For Review and Approval of Rate)
Increases; Revised Rate Schedules.)

DOCKET NO. 02-0371

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2003 JAN 14 A 11:26

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ORDER NO. 19955

Filed Jan. 14, 2003
At 9:00 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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ORDER

I.

By application filed on October 11, 2002, MOLOKAI PUBLIC UTILITIES, INC. (Applicant), seeks commission approval of a rate increase and revised rate schedule pursuant to Hawaii Revised Statutes (HRS) § 269-16 (proposed rate increase). Applicant is a public utility authorized to provide water service to an area covering approximately 6,800 acres on the west end of the island of Molokai.¹

A public hearing was held on the proposed rate increase, pursuant to HRS §§ 269-16 and 269-12, on the island of Molokai on December 17, 2002, wherein the commission heard oral testimony in support of, and in opposition to, the proposed rate increase.

A timely motion to intervene in the instant proceeding was filed by West Molokai Citizens Committee (Movant) on

¹Applicant provides water service in the resort community development formerly owned by the Kaluakoi Corporation. An unoccupied hotel, condominiums, a golf course, a beach park, and residential units sit on the property.

December 18, 2002 (motion to intervene).² On December 26, 2002, Applicant submitted a timely opposition memorandum to Movant's motion to intervene (opposition).³ No other persons moved to intervene in this docket.

Applicant served copies of the application on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs (Consumer Advocate). On October 29, 2002, the Consumer Advocate informed the commission that it had completed its initial review of the instant application, and that Applicant appears to have strictly complied with the requirements of Hawaii Administrative Rules (HAR), chapter 61, subchapter 8. Based upon this review, the Consumer Advocate did not object to the completeness of the application.

II.

Hawaii Administrative Rules § 6-61-55 sets forth the requirements to intervene in this proceeding, providing that "[i]ntervention shall not be granted except on allegations which

²Movant's motion to intervene asks that the commission authorize it to "fully participate as a party" in the instant proceeding.

³On January 7, 2003, Movant also filed a "Supplemental Pleading, In Support of its December 18, 2002 Motion to Intervene," which essentially is, in our view, a reply to Applicant's opposition. We note that our rules of practice and procedure only allow for the filing of an opposition to a motion. HAR § 6-61-41; see also, HAR § 6-61-20. Thus, because the commission did not grant Movant leave to file a reply, we will only give Movant's January 7, 2003 reply the appropriate weight in our consideration of its motion to intervene.

are reasonably pertinent to and do not unreasonably broaden the issues already presented."

Central to the motion to intervene is the premise that only Movant's members, as customers and rate-payers of Applicant, can provide evidence to the commission of the immediate and direct impact that the proposed rate increase will have on Applicant's customers. Movant argues that while it may be assumed that the Consumer Advocate will represent the interests of Movant, the Consumer Advocate cannot know the specific adverse impact that a proposed rate increase would have on Movant's homes, businesses, and agricultural efforts. Movant believes that such direct evidence from its members is essential to the commission's rendering of a legal and equitable decision in the instant docket.

Applicant opposes Movant's motion to intervene on the grounds that Movant has not established its standing in the instant proceeding, nor have the specific nature and extent of Movant's property, financial and other interests in this matter been identified. Applicant asserts that it is not enough to know that Movant is made up of a group of Applicant's customers. In order to assess whether the Consumer Advocate can adequately represent Movant's members, and to justify a grant of intervention, Movant must provide particulars such as the identity of its members, the number of its members relative to the total number of Applicant's customers, and the property interests of Movant's respective members.

Based upon a careful review of the motion to intervene and the opposition motion, we find that, among other things, Movant has not established that the Consumer Advocate cannot sufficiently represent its members' interests. Movant argues that only its members can know the direct impact the proposed rate increase can have on them. However, we believe that the specific information that Movant claims to be only known by Movant's members, e.g., the deterioration of its members' property values, and landscaping costs, is information the Consumer Advocate could obtain through discovery. Although Movant may be correct in stating that the Consumer Advocate could not personally experience the impact the proposed rate increase may have on Movant's members, we do not find that this lack of personal experience precludes the Consumer Advocate from fulfilling its statutory mandate to represent all consumers in the instant proceeding, or any other proceedings. Granting Movant's motion to intervene would amount to a duplication of efforts by Movant and the Consumer Advocate, and serve to delay the instant proceedings. For these reasons, we are not convinced that Movant's allegations are reasonably pertinent to the issues already presented in this docket and do not unduly broaden them.

The commission recognizes, however, the possible adverse impact that the proposed rate increase may have on Movant and its members' interests. Accordingly, pursuant to HAR § 6-61-56, we find that participant status, without intervention, would be the appropriate means for Movant to be allowed to

monitor and state its position in this docket. The commission, thus, finds that Movant's participation in the instant proceeding shall be limited to the following: (1) monitoring of the proceeding; (2) receiving copies of testimony, information requests and responses and other related documents filed in this proceeding, other than those documents deemed confidential and under protective order by the commission; and (3) the filing of a position statement on the issues established in this docket.⁴ However, the commission advises Movant that it may, at any time, reconsider its grant of participation status to Movant, or impose additional limitations or conditions on its participant status as the commission determines is necessary to ensure that the proceedings move forward in a reasonable and timely manner.

Accordingly, we conclude that Movant has not met the requirements for intervention set forth in HAR § 6-61-55, and therefore, must deny Movant's motion to intervene. We further conclude that Movant should be granted participant status, pursuant to HAR § 6-61-56 and subject to certain limitations and conditions set forth in this order.

⁴In monitoring the proceeding, we encourage Movant to confer and share information with the Consumer Advocate.

III.

THE COMMISSION ORDERS:

1. Movant's motion to intervene, filed on December 18, 2002, is denied.

2. Movant is granted participant status in this proceeding, pursuant to HAR § 6-61-56 and subject to certain limitations and conditions set forth in this order.

3. Movant's participation shall be limited to: (1) monitoring the instant proceeding; (2) receiving copies of testimony, information requests and responses, and other related documents filed in this proceeding, other than those documents deemed confidential and under protective order by the commission; and (3) the filing of a position statement on the issues established in this docket.

4. Unless ordered otherwise, Movant shall file its position statement with the commission on the date that Applicant and the Consumer Advocate must file their post-hearing briefs, to be set forth in a subsequent order.

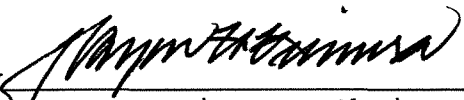
5. The commission may, at any time, reconsider its grant of participation status to Movant, and may impose additional limitations or conditions on Movant's participation status as the commission determines is necessary to ensure that the instant proceedings move forward in a reasonable and timely manner.

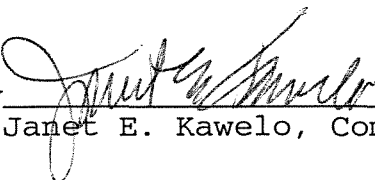
6. Applicant and the Consumer Advocate shall meet informally to formulate the issues, procedures, and schedule with respect to this docket, to be set forth in a stipulated


prehearing order. The stipulated prehearing order shall be filed with the commission within 20 days from the date of this order for commission review and approval. If unable to stipulate to such an order, each party shall submit a proposed prehearing order for the commission's consideration.

DONE at Honolulu, Hawaii this 14th day of January, 2003.

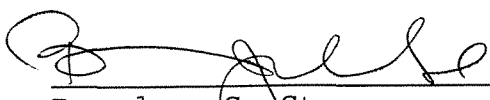
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

By 
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

02-0371.0h

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 19955 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: January 14, 2003